



The claimant argues the evidence supports the ALJ's conclusion that jurisdiction was appropriate. Thus, claimant requests the Order be affirmed.

The respondent appeared at the preliminary hearing,<sup>2</sup> and other than admitting an accident occurred, and that notice and timely written claim were made, he offered no oral or written argument as a defense to the ALJ or on appeal.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Respondent Gabriel Valdovino owns and operates Valdovino Framing, a house framing company he has operated for 3 years. Mr. Valdovino testified that his business is located at his home in Kansas City, Kansas, but the company does house framing work in Missouri, not in Kansas. At the time of claimant's accident Mr. Valdovino employed five people and his yearly payroll exceeds the statutory threshold set forth in K.S.A. 44-505. Although Mr. Valdovino produced a certificate of insurance during the preliminary hearing, no defense has been provided by his insurer in this action.<sup>3</sup>

At some point in time, a friend of claimant's took him to a construction site in Missouri and introduced him to Mr. Valdovino, who hired him to do framing work. All the evidence included within the record indicates claimant worked for respondent in Missouri and never in Kansas.

On May 19, 2004, claimant was working for respondent when he fell off a roof. He has incurred a significant number of medical bills (in excess of \$90,000) and is presently unable to work. Mr. Valdovino has not paid any of the medical bills attributable to this accident and he contends he is unable to pay them.

Before an accident is compensable under the Act, either the accident must have occurred within Kansas, the contract must have been formed within Kansas, or claimant's principal place of employment must be within Kansas. The pertinent statute, K.S.A. 44-506, provides, in part:

The workmen's compensation act shall not be construed to apply to business or employment which, according to law, is so engaged in interstate commerce as to be not subject to the legislative power of the state, nor to persons injured while they

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<sup>2</sup> The Order indicates the respondent did not appear. This is inaccurate. Gabriel Valdovino appeared pro se and testified at the August 3, 2004 hearing.

<sup>3</sup> This is understandable since the certificate of insurance Mr. Valdovino produced relates to a commercial general liability policy and not to any workers compensation coverage.

are so engaged: *Provided*, That the workmen's compensation act shall apply also to injuries sustained outside the state where: (1) The principal place of employment is within the state; or (2) the contract of employment was made within the state, unless such contract otherwise specifically provides. . .

Here, there is no dispute the claimant's accident occurred in Missouri and the uncontroverted evidence is that the parties' contract of employment was made in Missouri. The only basis for Kansas jurisdiction would be if the claimant's principal place of employment was within Kansas.

The Board has reviewed the entire record and concludes there is nothing within the evidence which would indicate that Kansas was the primary or chief area where claimant worked, or which would indicate claimant performed a considerable or significant amount of work within Kansas. In fact, other than the fact that both claimant and Mr. Valdovino reside in Kansas, there is nothing about Kansas that has any special significance or relationship to the parties' employment relationship. Claimant performed work for respondent exclusively in Missouri. He was paid, in cash through a straw man, on Friday of each week. There is no indication that claimant ever performed any work whatsoever for respondent within the State of Kansas. The Board concludes that claimant failed to prove his principal place of employment was within the state of Kansas.

As claimant has failed to establish there is jurisdiction under the Act, the ALJ's Order must be reversed and the benefits claimant seeks must be denied.

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Steven J. Howard dated August 4, 2004, is reversed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of September 2004.

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BOARD MEMBER

c: C. Albert Herdoiza, Attorney for Claimant  
Gabriel Valdovino, pro se Respondent  
Jeffrey S. Austin, Attorney for the Fund  
Steven J. Howard, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director